UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KOREEM WASHINGTON, Plaintiff,	:	__ Civ. ____
-against-	:	**COMPLAINT**
ELEGANTE SERVICES INC. and NEW ELEGANTE CAR SERVICE, JOSE VILORIA, ANGELA PRATTS AND RICARDO OQUENDO, Defendants.	:	**DEMAND FOR JURY TRIAL**

Plaintiff, Koreem Washington, by and through his undersigned counsel, upon personal knowledge as to himself and his own acts and upon information and belief as to other matters, alleges against Elegante Services Inc., New Elegante Car Services, Jose Viloria, Angela Pratts and Ricardo Oquendo (collectively, "Defendants") as follows:

NATURE OF THIS ACTION

1. Mr. Washington (or "Plaintiff") brings this action against Defendants for unpaid wages and affirmative relief pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.*, ("FLSA") and the regulations thereto, including Title 29 of the Code of Federal Regulation ("CFR"), Subtitle B, Chapter V and the New York State Labor Law, as amended, §§ 190, *et seq.* and §§ 650, *et seq.* ("NYLL"), and the regulations thereto, including Title 12 of the New York Codes, Rules and Regulations ("NYCRR") §§ 142, *et seq.*

2. In addition, Mr. Washington brings this action against defendants Elegante Services Inc. and New Elegante Car Service (together, "Corporate Defendants" or "Elegante Transportation") for unlawful discrimination and retaliation based on race and disability, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C., as amended, §§ 2000e, *et seq.* ("Title VII") and the Americans with Disabilities Act of 1990, 42 U.S.C., as amended, §§ 12101, *et seq.* ("ADA") and against all Defendants pursuant to the New York State Human Rights Law ("NYSHRL") and the New York

City Human Rights Law ("NYCHRL") for illegal discrimination and retaliation based on race and disability.

3. Mr. Washington additionally brings this action against Mr. Viloria, Ms. Pratts and Mr. Oquendo (collectively, the "Individual Defendants") for aiding and abetting Elegante's illegal discriminatory acts, in violation of the NYSHRL and the NYCHRL.

4. Mr. Washington further brings this action against Defendants pursuant to the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. §§ 2601, *et seq.*, ("FMLA"), for unlawful interference with, and retaliation for, exercising his FMLA rights.

5. This action seeks to recover unpaid wages, liquidated damages, penalties, interest, attorneys' fees and declaratory relief resulting from Defendants' violations of the FLSA and the NYLL and damages for front pay, back pay, lost benefits, compensatory damages, punitive damages, attorneys' fees and costs, interest and injunctive relief for damages resulting from Elegante's violations of Title VII and the ADA and Defendants' violations of the FMLA, the NYSHRL and the NYCHRL, along with any further and additional relief the Court deems just and proper.

ADMINISTRATIVE PREREQUISITES

6. Mr. Washington has complied with the administrative prerequisites to invoke the jurisdiction of this Court, as required by Title VII and the ADA.

7. On April 28, 2016, Mr. Washington filed a Charge of Discrimination with the Equal Opportunity Employment Commission (the "EEOC"), complaining of the discriminatory acts described herein.

8. The EEOC issued a Notice of Right to Sue, dated December 27, 2016, which is attached as Exhibit A.

9. Additionally, contemporaneously with the filing of this Complaint, Mr. Washington has mailed a copy of this Complaint to the New York City Commission on Human Rights and the Office of Corporate Counsel of the City of New York, thereby satisfying the notice requirement of Section 8-502 of the New York City Administrative Code.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1334. This Court has supplemental jurisdiction of the NYLL, NYSHRL and NYCHRL claims under 28 U.S.C. § 1367.

11. Upon information and belief, Defendants are subject to personal jurisdiction in New York.

12. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court is empowered to issue declaratory relieve.

13. This Court is empowered to issue injunctive relief pursuant to 29 U.S.C. § 217.

14. Venue is appropriate in the Southern District of New York because, pursuant to 28 U.S.C. § 1391(b), a substantial part of the acts or omissions giving rise to the claims occurred in this District.

THE PARTIES

Plaintiff

Koreem Washington

15. Koreem Washington, an African American man in his thirties, is a resident of New York State, Bronx County.

16. Mr. Washington served Defendants for over four years, from March 1, 2011 until July 2015, working in their medical transport services division, Elegante Services, described herein.

17. Throughout his tenure working for \Defendants, Mr. Washington was their "employee" within the meaning of within the meaning of Section 4 3(e) of the FLSA, 29 U.S.C. § 203(e) and the NYLL § 190(2)(5) and as defined by Title VII, the ADA, the FMLA, the NYSHRL and the NYCHRL.

Defendants

Corporate Defendants:

Elegante Services Inc.

18. Elegante Services Inc. ("Elegante Services") operates in New York State as a New York Domestic Business Corporation, where it was incorporated in February of 2012.

19. Elegante Services, at all relevant times, operate out of its base office at 1804 Randall

Avenue, Bronx, New York 10473 and a nearby office1904 Lacombe Avenue, Bronx New York.

20. Elegante Services offers non-emergency medical transportation ("N-EMT") to patients traveling to and from medical appointments who need extra assistance because of a medical condition. Elegante Services transports these patients in special-purpose vehicles equipped to carry wheelchairs or otherwise accommodate such disabled persons, which are staffed with two-men teams, a driver and his helper. Elegante uses two types of vehicles to transport patients requiring such assistance, ambulettes and a "buggy." Ambulettes are specially-equipped vans that can carry two or three wheelchair patients, while a "buggy" is a car equipped to carry a single wheelchair patient, and much smaller.

21. Elegante Services also provides N-EMT to patients who do not need special assistance, such as shuttle services to and from nursing homes and rehab centers and private livery car services.

22. Elegante Services is a for-profit company, which receives most, if not all its income from insurance companies, which include both private insurers and government health care programs, such as Medicaid and Medicaid.

23. What would be Elegante Services began providing assisted N-EMT prior to its incorporation, in or before 2011, when it only serviced Brooklyn.

24. While Elegante Services assisted NEMT remains local, it now transports patients in its ambulettes and "buggy" within the borders of all five boroughs of New York City.

New Elegante Car Service, Inc.

25. New Elegante Car Service, Inc. ("Elegante Car") is a New York Domestic Business Corporation, incorporated in New York State in May 1993.

26. Elegante Car is also based out of 1804 Randall Avenue, Bronx, New York 10473 and has offices at 1904 Lacombe Avenue in the Bronx, New York, where it operates with Elegante Services under the same d/b/a name "Elegante Transportation Services."

27. Elegante Car is a for-profit livery car service, which provides general ground transportation to passengers within all five boroughs of New York City, dispatching vehicles from

Queens, Brooklyn and Manhattan along with those dispatched from the Bronx.

Individual Defendants:

Jose Viloria

28. Jose "Vito" Viloria, a Dominican man, is, upon information and belief a resident of the Bronx, New York.

29. Mr. Viloria is the President of Operations of both Elegante Services and Elegante Car and the face of both, combined as Elegante Transportation

30. Mr. Vito works out of the Elegante Transportation's Bronx headquarters office and is the top on-the-scene executive managing Elegante Transportations' employees.

Angela Pratts

31. Angela Pratts, a Hispanic woman, is Mr. Viloria's spouse and, upon information and belief, a resident of the Bronx, New York.

32. Ms. Pratt is the Chief Executive Officer of Elegante Services and of Elegante Car.

Ricardo Oquendo

33. Ricardo Oquendo, a Puerto Rican man, upon information and belief, is a resident of the Bronx, New York.

34. Mr. Oquendo served as Elegante Transportation's Operations Manager throughout Mr. Washington's tenure with the Company, having served as an executive of Elegante Car for several years prior to Mr. Washington's 2011 arrival and was in the role of Operations Manager of Elegante Car in 2015 when Mr. Washington's employment with the Company ended. [correct?]

35. Mr. Oquendo too worked out of Elegante Transportation's Bronx headquarters, where he was the direct manager of all Elegante Transportation's employees. Mr. Oquendo was the most senior executive on the scene after Mr. Viloria.

Defendants Were Mr. Washington's Employers

Elegante Services and Elegante Car Are an Integrated, Single Employer

36. Elegante Services and Elegante Car are an integrated, single employer, both working under the d/b/a name Elegante Transportation.

37. For example, Elegante Services and Elegante Car have interrelated operations, centralized control of labor relations, common management and common ownership or financial control.

38. Indeed, their operations are centralized and headquartered at the same office in the Bronx and during the relevant time through today, Ms. Pratts sit as the CEO and Mr. Viloria as the President of Operations of both. In addition, during the relevant time, Mr. Oquendo served as upper management of both, serving as the Manger of Operations

Elegante Services and Elegante Car Are Joint Employers

39. Elegante Services and Elegante Car are likewise joint employers.

40. For instance, Elegante Services and Elegante Car share the same website, do business under the same name, Elegante Transportation; and have overlapping upper management and executives who share supervisory authority over both groups of Elegante Transportation.

41. Moreover, Elegante Services and Elegante Car share resources, including their headquarters office, main telephone number and primary email address contact address.

42. Additionally, the executives at have the power to hire and fire employees in either group, determine pay and manage payroll, among other things.

The Individual Defendants Were Mr. Washington's Employers Pursuant to the FLSA and the NYLL

43. The Individual Defendants were Mr. Washington's "employers" for purposes of the FLSA and the NYLL, who were acting as such within the course and scope of the employer-employee relationship at all relevant times.

44. The Individual Defendants always exercised sufficient control of Elegante Services' operations to be covered employers pursuant to the FLSA and the NYLL.

45. The Individual Defendants directly managed Elegante's day-to-day operations.

46. Indeed, the Individual Defendants possessed the authority to hire and fire employees; implemented and supervised employees' work schedules; set employee pay rates; devised, directed, implemented and supervise Elegante Services' wage and hour practices affecting Defendants'

employees and were responsible for maintaining employee records, including payroll records.

47. Indeed, at all relevant times, the Individual Defendants acted on Elegante Services' behalf and consented to, ratified and authorized Elegante Service's acts alleged herein.

FACTS

Mr. Washington Begins Employment with Defendants in 2001 as an N-EMT "Helper," after Mr. Washington's Friend, Felix, an N-EMT Driver, Invites Mr. Washington to Work with Him as a Patient Assistant

48. Mr. Washington began employment with Defendants in March 2011, after a Puerto Rican friend, Felix, asked Mr. Washington if he wanted a job with Defendants working as his "helper."

49. Defendants had just hired Felix as a driver for an ambulette they added to their car service. As a driver of patients requiring assisted N-EMT services, Felix was to find a helper with whom to work.

50. A helper's job was to assist disabled passengers in to and out of N-EMT vehicles. While some patients needed minimal assistance, other patients needed total assistance. For example, patients in wheelchairs who lived in walk-up apartment buildings had to be carried down flights of stairs to the N-EMT vehicle to go to their appointments, then back up the stairs upon return.

51. The Company referred to passengers who needed to be carried as "two-men jobs" because carrying these transports up and down stairs required two men.

52. Two-men jobs were not limited to wheelchair-confined patients, but also included physically carrying patients with other mobility-limiting restrictions, such as obese patients and bed-ridden patients.

53. Mr. Washington agreed to work with Felix as his helper, and, prior to meeting Elegante Transportation management, on March 1, 2011 began riding with Felix and assisting patients.

During Mr. Washington's First Week of Employment with Defendants, while Riding with Felix as Felix's Helper, Felix Has a Car Accident; Mr. Washington Is Injured and Meets with Mr.

Oquendo, Who Instructs Mr. Washington Not to See a Doctor

54. During Mr. Washington's first week working for Defendants, while riding with Felix as his helper, Felix had a car accident in which Mr. Washington injured his back.

55. Mr. Washington met Operations Manager, Mr. Oquendo, after the accident and related his injuries to him. Mr. Oquendo expressed concerned, however, it was not concern empathetic to Mr. Washington.

56. Instead, Mr. Oquendo warned Mr. Washington not to harm the Company by seeing a doctor. As a nod to the implied agreement, Defendants paid Mr. Washington a few extra dollars for his first week of employment with them above the $8 an hour they had determined he was worth.

Defendants Demote Felix to Helper and Assign Mr. Washington to Work with an African-American Driver and Felix to Work Helping a Hispanic Driver in a New N-EMT Vehicle

57. Following the accident, Defendants demoted Felix to a helper and assigned him to a new ambulette Defendants had just acquired.

58. Meanwhile, Mr. Washington remained as a helper on the old ambulette and paired with an African American driver, Richard Higgins.

59. With the acquisition of the second ambulette and the demotion of Felix, who after a couple weeks of employment was involved in an accident and who Defendants knew did not have the proper certification and license required to drive an ambulette, Defendants needed to hire another driver.

60. Mr. Washington recommended a friend of his, Jermaine Bruno, to Mr. Oquendo. As an experienced driver of N-EMT vehicles with a resume including driving for the MTA's Assist-a-Ride Program, which is a City-supervised program offering assisted N-EMT to disabled New Yorkers, Mr. Bruno was an ideal candidate for the position. As an African American, however, he was not an ideal employee to Defendants. Mr. Oquendo rejected Mr. Bruno as a candidate outright.

61. Mr. Washington then told a Hispanic friend of his, Jose, about the position. Jose applied without revealing he knew Mr. Washington. Despite Jose being far less experienced than Mr. Bruno, Mr. Oquendo hired him immediately.

62. Defendants then paired Jose with Felix, thus creating a Hispanic-staffed ambulette team a black-staffed ambulette team of Mr. Washington and Mr. Higgins who, in addition to sharing the old ambulette, also shared the distinction of being two of very few black employees Defendants employed.

Defendants' Employee Demographics Do Not Reflect the Applicant Pool, Greatly Over-Representing Hispanics and Critically Under-Representing Blacks

63. Indeed, apart Mr. from Washington and Mr. Higgins, Defendants employees throughout Mr. Washington's tenure, were almost all Hispanic, making up over 90% of the individuals Defendants hired.

64. Upper management was all Hispanic, the office employees were all Hispanic and upon information and belief, the drivers Defendants hired to work as livery drivers in the Elegante Car division were primarily if not all Hispanic.

65. While the Bronx does have large Hispanic population, it also has a large African American or black population. Indeed, approximately 30% of Bronx residents are black, yet black employees account for an estimated less than 3% of Defendants employee pool.

66. Moreover, Defendants applicant pool was not limited to Bronx residents or its headquarters work base out of the Bronx. For example, Elegante Car dispatches vehicles out of Brooklyn as well, where nearly a quarter of New York's livery drivers reside, more than double the number the number of livery drivers residing in the Bronx, and a borough in which black residents account for over 30% of the population, while Hispanics residents come it at under 20%.

In Addition to Its Hiring Practices, Mr. Washington Quickly Became Aware in Practice Defendants Favored Hispanic Employees to the Disadvantage of Black Employees

67. Defendants employee pool not only decisively overrepresented Hispanics and grossly underrepresented blacks demographically, but in practice, Defendants also favored Hispanic employees to the burden of black employees.

68. Indeed, at the very beginning of his employment with Defendants, the disparity

became clear to Mr. Washington.

69. For example, on paper, the ambulette teams were made up of equal employees whose positions of driver and helper mirrored each other. In reality, however, the employment terms and conditions to which Defendants subjected the two teams differed greatly.

70. Unlike the Hispanic team, who Defendants would let off early after an easy day with minimal transports, Defendants directed the bulk of the calls to Mr. Washington and Mr. Higgins. Moreover, when there were no other calls to direct to Mr. Washington and Mr. Higgins after they dropped off a patient scheduled for hours of treatment, such as a three to four-hour dialysis appointment, Mr. Oquendo told Mr. Washington and Mr. Higgins they were not allowed to leave the hospital parking lot for a break or otherwise, instead requiring them to sit aimlessly in the parking lot for hours until it was time to make the return trip.

71. The types of calls Defendants' directed to the teams also differed. For instance, two-man jobs, where the driver and the assistant had to carry patients up and down flights of stairs, were a tremendous burden compared to jobs picking up patients who met a driver and a helper at the vehicle. Accordingly, when two-man calls came in, they routinely went to Mr. Washington and Mr. Higgins and rarely to the Hispanic team.

72. Furthermore, while Mr. Oquendo would relieve the Hispanic team on time or early, he required Mr. Washington and Mr. Higgins to stay far past the scheduled hours nightly. Consequently, Mr. Washington found himself working from around 6 a.m. until 10 p.m. or later, long after the Hispanic team had gone home for the day.

73. On occasion, Mr. Washington worked as Jose's helper when Felix was out. Jose confirmed the difference Mr. Washington noticed, revealing when he and Felix worked together, they really did not have to do anything, but with when he worked with Mr. Washington, the position was burdensome and involved two-man jobs.

74. As a result of having to work an occasional day of Mr. Washington's regular day, Jose became fed up and suddenly quit in 2011. Desperate for a driver, Mr. Oquendo conceded and hired Mr. Bruno to fill the immediate need.

Defendants Apply Different Compensation and Promotion Policies Based on Race, Paying Hispanic Employees More than Black Employees for the Same Positions, Promoting Hispanic Employees Quickly and Over Black Employees and Only Allowing Hispanics to Work or Spend Time in the Office

75. In 2012, Defendants began significantly expanding Elegante Services, by acquiring additional N-EMT vehicles, which required Defendants to hire more driver and helper employees.

76. While Defendants never hired black employees to work office jobs and maintained a policy and practice of restricting black employees from being in the headquarters office in general, Defendants' need for helpers and drivers to staff its new N-EMT vehicles required that Defendants hire some black employees if it wanted to operate its entire N-EMT fleet.

77. Defendants continued hiring Hispanics over blacks for the positions and during Mr. Washington's tenure, he estimated he saw about seventy Hispanic employees go through the helper and driver positions, but only around five black employees.

78. These hires illuminated Defendants discriminatory pay practices and policies.

79. For example, Defendants hired Mr. Bruno, an African American, as a driver in the last half of 2011 and paid him about $9 an hour. Soon thereafter, in or around early 2012, Defendants hired a Hispanic driver, Hector, into the same position, but paid him $12 an hour, despite Hector coming in with no experience. Meanwhile, Defendants continued to pay Mr. Bruno $9 an hour, even though he was a more experienced and better-skilled N-EMT driver. Meanwhile, Defendants paid Mr. Higgins, the African American driver with whom Mr. Washington worked who had been in the position since early 2011 $9 an hour. Defendants also hired Melvin, a Hispanic male, around this time as a driver and paid him at least $10 an hour, even though he was an unskilled driver.

80. Defendants also paid black helpers less than they paid Hispanic helpers with the same or less experience and skill. For instance, Defendants paid Felix $12 an hour when he was demoted to helper in early 2011, while they paid Mr. Washington $8 an hour. Defendants had only employed Felix a week or two longer than Mr. Washington and required less of Felix, than they did Mr. Washington.

81. Moreover, Defendants kept Mr. Washington at the lower pay rate of $8 in 2011, 2012 and into 2013, while Defendants hired Hispanic helpers with no experience during this period at higher hourly rates of $10 to $13 dollars an hour.

82. Additionally, during this period, in early 2012, Mr. Washington asked Mr. Oquendo to raise his hourly rate to be on par with his experience and responsibilities, which by this time, included training employees. Mr. Oquendo refused the request and Mr. Oquendo remained at $8 an hour, not even on par with the $10 to $13 an hour Defendants paid the Hispanic helpers with substantially fewer responsibilities and far less experience.

83. Defendants also promoted Hispanic helpers and drivers quickly out of those positions, while not promoting more experienced and longer tenured black employees.

84. Defendants promoted Felix, just months after demoting him to a helper after his accident, to a Road Supervisor in October or November 2011. Moreover, in this role, Defendants allowed Felix to go home early in the afternoon, around 1 p.m., and continue earning hourly pay purportedly working from home.

85. Defendants policy of promoting Hispanic employees and not black employees was prevalent. Additional examples include, but are not limited to, Defendants repeatedly requiring Mr. Washington to train Hispanic hires who they then quickly promoted over him.

86. In 2013, Defendants hire Frank Dejesus, a Hispanic man, and had Mr. Washington train him. Defendants made Mr. Dejesus a manager in 2013.

87. In 2014, Mr. Washington trained Mike, a Hispanic man Defendants hired as a helper. Approximately three months into Mike's employment with Defendants, Defendants promoted him to an office job and paid him a salary. Defendants refused to hire black employees for office jobs, repeatedly claiming the job required bilingual employees. The excuse was pretextual, as not all office employees were bilingual, but all were Hispanic, and not all black applicants and employees were unilingual.

88. Later in 2014, Defendants required Mr. Washington to train Ana Destrepo, a Hispanic woman. Defendants told Mr. Washington she was hired in an equal position to him, but soon after,

Mr. Washington learned Ms. Destrepo had been hired as a manager to replace Mr. Dejesus, who left at the end of that year.

89. Ms. Destrepo was not qualified for the position and Defendnats employees repeatedly had to call upon Mr. Washington to correct her mistakes.

90. Ms. Destrepo explained to Mr. Washington Defendants hired her over him because they wanted "a Hispanic woman in charge" and that Mr. Viloria and Oquendo had directed her to ensure the Company not hire "any more black people."

Elegante Subjected Its Black Employees to Far More Burdensome Employment Conditions than Its Hispanic Employees, Who Mr. Oquendo would Reassign to Preferable Jobs Distributed Objectively the Night Prior

91. In 2012, Defendants continued their policy of assigning Hispanic drivers and helpers with fewer transports and transports that were less burdensome, like two-man jobs, and directing them to black helpers and drivers.

92. Defendants policy became abundantly clear when it began using an employee portal, Logisticare, to distribute driver and helper assignments the night prior to the transports.

93. Calls came in the day before pickups to a dispatcher, who distributed them equally and objectively between the N-EMT vehicles, without which employees were working which vehicles. At midnight, the dispatcher would send the assignments to the drivers and helpers to their phones through a portal from which they could access their schedules.

94. Mr. Washington would then access the assignments the night prior through his phone, and see how many he had, in what neighborhoods and if the jobs were two-man jobs or transport of a mobile person.

95. The next morning, however, when Mr. Oquendo came in, Mr. Oquendo redistributed the objectively assigned transports subjectively, directing the two-man jobs to Mr. Washington and other black employees, giving the Hispanic employees lighter scheduled.

96. Mr. Oquendo additionally redirect assignments to transport patients in what he called "ghetto neighborhoods" to the black employees. "Ghetto neighborhoods" were area of New York

Mr. Oquendo perceived as dangerous.

A New Manger Arrives and Defies Defendants' Discriminatory Directives

97. In or around February 2013, Defendants hired a new manager, Mr. Dejesus, to take over management of the Elegante Services employees, and Mr. Oquendo focus was now turned primarily to the Elegante Car side of the Company.

98. Mr. Dejesus, defying Defendants directives, made changes that did not erase the discrimination and disparity black employees suffered, but improved their conditions.

99. For example, while black drivers, such as Mr. Washington, were made to work long shifts and Hispanic employees allowed short shifts, with no objective schedule controlling them, Mr. Dejesus created schedule of two eight-hour shifts, one from morning to afternoon and one from afternoon to evening.

100. Mr. Dejesus scheduled Mr. Washington to work morning shifts, from 7 a.m. to 3 p.m. five days a week, Monday through Friday.

101. In addition, Mr. Dejesus finally approved a pay raise for Mr. Washington and in or around February or March 2013, Mr. Washington began earning $10.

102. Mr. Dejesus also agreed to raise Mr. Washington's salary further if he got his license to become a driver.

103. By October 2014, Mr. Washington had obtained the CDL license required to drive and at that time Mr. Dejesus promoted Mr. Washington to driver and to a Road Supervisor and raised his hourly pay to $13, against Mr. Oquendo and Mr. Viloria's express wishes and prior to Mr. Dejesus leaving the Company at the end of 2014.

When Mr. Dejesus Leaves, Defendants Return to Their Old Discriminatory Ways

104. Mr. Dejesus left the Company in December 2014 and Defendants reverted to their prior discriminatory practices and policies.

105. No longer on a schedule, Mr. Washington found himself again working forced overtime. While Mr. Washington worked overtime when Mr. Dejesus was in charge, he did so voluntarily, picking up one to two extra shifts. Now once again, he had no control and Defendants

directed him to work long hours in favor or Hispanic employees.

Mr. Washington Suffers an Injury, Is Advised to Take Leave by His Physicians and File for Workers Compensation and Defendants Refuse Leave and Interfere with Mr. Washington's Workers' Compensation Claim

106. On May 14, 2015, Mr. Washington was driving an ambulette with a helper, Kyle, when their van was hit by another driver.

107. An ambulance came and the EMTs advised Mr. Washington to go to the hospital, suspecting he broke his hand, which was swollen and in a lot of pain.

108. Mr. Viloria and Mr. Oquendo denied the necessary accommodation, however, and told Mr. Washington he had to continue transporting patients through the end of his shift.

109. The next day, Mr. Washington went to the hospital where doctors confirmed he had broken bones in his hand, advised him to take leave since his job driving was labor intensive, specifically advising Mr. Washington "not work at all" for six to eight weeks.

110. At the hospital, Mr. Washington was also advised to file a Workers' Compensation Claim.

111. The following day, Mr. Washington returned to Defendants headquarters office with the medical documentation advising leave, which he presented to Mr. Viloria. Mr. Viloria refused.

112. When Mr. Washington brought up Workers Compensation, Mr. Viloria directed Mr. Washington work out of the office and use his attorney regarding the claim.

113. Mr. Viloria seemed concerned, asked a lot of questions and had his attorney come to the office to advise Mr. Washington about his claim. Mr. Viloria's assistant listened in to Mr. Washington's consultation with Mr. Viloria's attorney.

Elegance Transportation Subjects Mr. Washington to an Increased Hostile Work Environment, but when Mr. Washington Complains Mr. Viloria Laughs at Him and Refuses to Take Any Action

114. Defendants did not hide their discriminatory animus toward their black employees,

but were open about it.

115. While Mr. Washington's race is African-American, his stepfather is Hispanic and his siblings are biracial, half black and half Hispanic. Accordingly, Mr. Washington, while not fluent, understands the gist of Spanish conversations. Unaware of this, Defendants and the Hispanic office employees would speak openly disparaging Defendants black employees and black people in general.

116. Throughout his employment, Defendants subjected Mr. Washington to racists comments and slurs, but not wanting toe "rock the boat" by complaining to management. However, when Mr. Washington worked out of Defendants' office his last months, they were endless.

117. For example, Caesar, a relative of Mr. Viloria, constantly taunted Mr. Washington with disparaging remarks about black people, black woman's butts, black peoples cooking skills and an array of racist jokes. In addition, he gave me orders even though he was not my supervisor and when I pointed out I worked in the office now too like him, and I have a problem with your comments, Caesar told me I was not like him and continued his adverse treatment.

118. In his final days, Mr. Washington complained to Mr. Viloria and gave him examples of the comments to which he was subjected daily.

119. Rather than reform the situation, however, Mr. Viloria laughed at Mr. Washington and denied there was a problem.

120. Consequently, Mr. Washington felt he could not continue in that environment. Accordingly, because Elegante failed to accommodate Mr. Washington's injury, subjected him to the hostile and toxic work environment throughout the day in the office and then laughed at his complaint, Mr. Washington could no longer work at the company. Mr. Washington's last day was July 3, 2015.

Mr. Washington Works Substantial Overtime for Defendants, Yet Defendants Fail to Pay Mr. Washington Any of the Overtime Premium Pay Mr. Washington Earned

121. Defendants policies and practice of suffering, permitting and demanding Mr. Washington work long hours, resulted in Mr. Washington working substantial overtime, for which Defendants failed to pay him at the legally-required overtime premium.

122. Both the FLSA and the NYLL require employers like Defendants to pay non-exempt

employees, like Mr. Washington, time and a-half their hourly rate of pay for all time worked exceeding 40 hours in a second day workweek.

123. Until the final weeks of Mr. Washington's employment with Defendants, Mr. Washington worked substantial overtime regularly, yet Defendants retained Mr. Washington's earned overtime premium pay, and never paid him any of it.

124. Mr. Washington hours and positions, all non-exempt, during his employment with Defendants were as follows:

	Dates	**Position**	**Primary Duties**	**Pay/ Hour**	**Average Weekly Schedule**	**Weekly Hours**
➢	March 1, 2011 - December 31, 2011	Helper	Assisting driver, intrastate, within New York, with N-EMT patients, limited to those residing in Brooklyn then later limited to Brooklyn and Queens, transporting patients ambulette to medical appointments within New York State and New York City, usually with driver, carrying non-mobile patients to vehicle.	$8	Worked six and sometimes seven days a week, starting at 6 a.m., when he would meet the vehicle at the Bronx base and then travel to Brooklyn, the only borough in which Defendants had N-EMT clients at the beginning then to Brooklyn and Queens later in the year, finishing back at the Bronx base at around 10 p.m. without breaks and constrained to wait in the vehicle by Defendants between transports.	96
➢	January 1, 2012 – February 28, 2013	Helper	Same as above, but by end of year, limitation expanded and remained limited to, transporting patients residing in all five boroughs of New	$8	Same as above, generally, but slightly fewer hours and by end of year traveling from Bronx base in the morning to clients residing in five boroughs of New York City, intrastate to	81

	Dates	Position	Primary Duties	Pay/ Hour	Average Weekly Schedule	Weekly Hours
			York City to medical appointments within the boroughs of New York City, intrastate, in New York.		appointments in New York City, then finishing back at Bronx base in evening.	
➢	March 1, 2013 – Sept. 31, 2014	Helper	Same as above.	$10	Mr. Dejesus broke the shifts during his time with Defendants into two 8-hour shifts. Mr. Washington's regular shift was from 7 a.m. to 3 p.m. five days a week, but Mr. Washington would pick up one to two extra shifts a week, i.e., work a double shift, always working more than 50 hours a week.	52
➢	October 1, 2014- December 31, 2014	Driver and Road Supervisor	As Driver, drive ambulette or buggy to transport N-EMT patients intrastate, assist non-mobile patients by carrying them to the vehicle with helper, within New York and limited to residents and medical appointments within the five boroughs of New York City between their residences in New	$13	Same as above.	52

	Dates	Position	Primary Duties	Pay/ Hour	Average Weekly Schedule	Weekly Hours
			York City to their medical appointments within New York City. As Road Supervisor, duties included cleaning vehicles and checking to see if vehicles are working; taking client complaints; picking up patients when the assigned driver was later or a no-show and transporting them between their residences and medical appointments, limited to patients and appointments in the boroughs of New York City, intrastate, within New York State.			
➢	January 1, 2015 – May 13, 2015	Driver and Road Supervisor	Same as above	$13	When Mr. Dejesus left in or around December 2014, Defendants returned to their old ways and during this period, Mr. Washington worked substantially longer, usually around 65 hours a week	65
➢	May 14, 2015 – July 3. 2015		Answering calls.	$13	After Mr. Washington became disabled and advised by doctors to take leave and file a	40

Dates	Position	Primary Duties	Pay/ Hour	Average Weekly Schedule	Weekly Hours
				Workers' Compensation claim, Defendants denied Mr. Washington leave, but put him in the office, to work 8 hour shifts five days a week.	

125. In addition to denying Mr. Washington overtime pay pursuant to the FLSA and the NYLL, Defendants also denied paying Mr. Washington spread of hours pay pursuant to the NYLL, even though Mr. Washington routinely worked shifts spread over ten hours.

Defendants Further Violate the NYLL by Failing to Provide Mr. Washington with a Statement of His Wages and by Failing to Provide Pay Statements for Each Pay Period Pursuant to the Mandates of the NYLL

126. Defendants always paid Mr. Washington "off the books" and never issued him written notice describing the terms of his pay, as required by NYLL § 195(1).

127. In addition, being paid "off the books," Defendants failed to provide Mr. Washington pay statements each pay period, pursuant to NYLL 195 § (3).

128. For most pay periods, Defendants offered Mr. Washington nothing, but towards the end of Mr. Washington's employment with Defendants, Defendants began presenting Mr. Washington with statements that neither included the information required by the NYLL, such as his hours, pay rate and overtime pay, nor accurately reflected anything.

129. Instead, these statements represented Defendants paid Mr. Washington a salary of $100 a week, less applicable employee withholdings.

130. Defendants never paid Mr. Washington a salary or took employee withholdings.

131. In addition, while Defendants retained a substantial portion of Mr. Washington's earned overtime and spread-of hours pay during his tenure with Defendants, had Defendants paid Mr. Washington $100 a week as reflected in the records with which they provided him, Defendants would be compensation Mr. Washington at a rate well below New York State's minimum wage, which went

from $7.25 an hour in 2011 when Mr. Washington began his employment to $8.00 an hour in 2014 and to $8.75 an hour in 2015, the year in which Mr. Washington's employment terminated.

FIRST CAUSE OF ACTION
DISCRIMINATION AND RETALIATION IN VIOLATION OF TITLE VII

(Against Corporate for Discrimination and Retaliation based on Race)

132. Plaintiff repeats and realleges the preceding paragraphs, as if fully set forth herein.

133. Defendants acts described herein violated Title VII Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

134. Defendants discriminated against Mr. Washington because of race and retaliated against him when he complained.

135. Defendants' conduct was with malice or reckless indifference to Mr. Washington's rights under Title VII.

136. Mr. Washington suffered damages as a result, including lost past and future wages, emotional distress and attorneys' fees and costs.

137. Because Defendants acted intentionally, Mr. Washington should additionally be awarded punitive damages

SECOND CAUSE OF ACTION
DISCRIMINATION AND RELTALIATION IN VIOLATION OF THE ADA
(Against Corporate Defendants)

138. Plaintiff repeats and realleges the preceding paragraphs, as if fully set forth herein.

139. Defendants' failure to reasonably accommodate Mr. Washington's disability constituted unlawful intentional discrimination against Mr. Washington's in Washington's disability violation of the ADA, 42 U.S.C. § 12112(b)(5)(A).

140. Defendants' conduct was with malice or reckless indifference to Mr. Washington's rights under the ADA.

141. Mr. Washington suffered damages as a result, including lost past and future wages, emotional distress and attorneys' fees and costs.

142. 145. Because Defendants acted intentionally, Mr. Washington should additionally be awarded punitive damages

THIRD CAUSE OF ACTION
RETALIATION AND INTERFERNECE IN VIOLATION OF THE FMLA
(Against Corporate Defendants)

143. Plaintiff repeats and realleges the preceding paragraphs, as if fully set forth herein.

144. By failing to accommodate Mr. Washington's request for leave and the other actions described herein, Defendants violated the FMLA, 42 U.S.C. 2002e *et seq.*

145. Mr. Washington suffered damages as a result of Defendants' unlawful retaliatory behavior and interference and is therefore entitled to back pay, front pay, post- and prejudgment interest, reinstatement and attorneys' fees and costs incurred in bringing this action, pursuant to the FMLA.

146. In addition, the FMLA entitles Mr. Washington to liquidated damages

FOURTH CAUSE OF ACTION
VIOLATION OF THE FLSA
(Against Defendants)

147. Plaintiff repeats and realleges the preceding paragraphs, as if fully set forth herein..

FIFTH CAUSE OF ACTION
VIOLATION OF THE NYSHRL
(Against Defendants for Race and Disability Retaliation and Discrimination and Against the Individual Defendants for Aiding and Abetting)

148. Plaintiff repeats and realleges the preceding paragraphs, as if fully set forth herein.

SIXTH CAUSE OF ACTION
VIOLATION OF THE NYCHRL
(Against Defendants for Race and Disability Retaliation and Discrimination and Against the Individual Defendants for Aiding and Abetting)

149. Plaintiff repeats and realleges the preceding paragraphs, as if fully set forth herein.

SEVENTH CAUSE OF ACTION
VIOLATION OF THE NYLL
(Against Defendants for Unpaid Overtime Compensation, Violation of NYLL § 195(1) and NYLL § 195(3) and for Failure to Pay Spread of Hours)

150. Plaintiff repeats and realleges the preceding paragraphs, as if fully set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

A. Accept jurisdiction over this matter;

B. Award Plaintiff unpaid wages and an equal amount in liquidated damages as provide for by the FLSA, 29 U.S.C. § 201, *et seq.* and the supporting United States Department of Labor regulations.

C. Award Plaintiff unpaid wages and an equal amount in liquidated damages as provided for by the NYLL;

D. Award Plaintiff s compensatory damages for Defendants' failure to provide written notice regarding their compensation terms upon commencement of employment, pursuant to the NYLL;

E. Award Plaintiff compensatory damages for Defendants' failure to furnish accurate and complete wage statements for each pay period, as provided by the NYLL;

F. Issue an injunction requiring Defendants to pay all statutorily-required wages;

G. Order Defendants to compensate Plaintiff for his past and future lost wages and benefits;

H. Enter a judgment in favor of Plaintiff for such amount as may be awarded by a jury for compensatory damages, including, without limitation, for his physical and emotional suffering and loss of enjoyment of life;

I. Enter a judgment in favor of Plaintiff for such amount as may be awarded by a jury for punitive damages;

J. Enter a judgment awarding Plaintiff all costs and reasonable attorneys' fees;

K. Enter a judgment awarding Plaintiff all pre- and post-judgment interest;

L. Enjoin Defendants from engaging in unlawful discriminatory practices;

M. Order Defendants to undergo anti-discrimination training; and

N. Grant such other further legal and equitable relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a jury trial on all questions of fact raised in this Complaint.

Dated: New York, New York
March 30, 2017

Alyson C. Bruns
c/o Law Office of Andrea Paparella, P.L.L.C.

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